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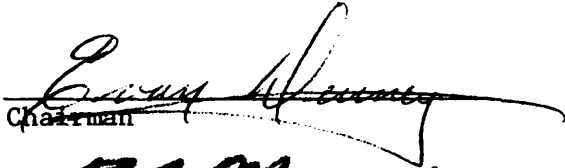

THE SUBDIVISION AND PLATTING ACT IN PRACTICE
IN NINE MONTANA COUNTIES

By
MARK BEARDSLEE

A professional paper submitted as a partial
requirement for a Master of Science in
Rural, Town and Regional Planning

March 1979

Committee


Chairman

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INTRODUCTION

The development of rural land into homesites in certain areas of Montana accelerated rapidly in the late 1960's and continues into the 1970's. It is associated with the growth of urban centers or has occurred in the form of recreational homesites in areas with high scenic and recreational value. This growth has often caused social impacts which local governments were unprepared to deal with. In some cases, it has also adversely affected the physical environment. To enable citizens of the state to have a voice in private land-use decisions which affected them, the Montana State Legislature passed the Montana Subdivision and Platting Act which went into effect on July 1, 1973.

This study outlines the adverse social and environmental impacts which can occur from development, evaluates current subdivision and platting laws, and proposes alternative methods for better control of development through governmental regulation and review.

CHAPTER I

SOCIAL AND NATURAL ENVIRONMENTAL IMPACTS

Adverse environmental impacts resulting from poorly planned subdivisions may be either physical or social. Physical environmental impacts range in severity from the nuisance of the occasional flooded basement to the actual deterioration of a site and damage to homes. Social environmental impacts, perhaps more difficult to measure, particularly in monetary terms, affect that potpourri of intangibles which make up the quality of life. For example, the aesthetics of a neighborhood or the quality of education received by the children living in an area.

SOCIAL ENVIRONMENTAL IMPACTS

Adverse social environmental impacts are manifested in the community in many ways. Where land development takes place at a rate greater than planned for by a local government, the demand for community services increases more rapidly than that government's ability to provide those services. For example, the Potomoc Valley is located 25 miles Northeast of Missoula, Montana, within easy commuting distance. This valley has a pleasant rural setting and is an attractive area for rural homesites. On the first school day in the fall of 1975 enrollment in the Potomoc School increased so dramatically from the previous year that there were not enough books, desks, rooms, or teachers to provide adequate schooling. Even if that school district had been willing to increase

educational services to the required level, the lag time between the realized need for such an increase and actual delivery may be considerable. Time is needed for planning the new facilities, passage of the necessary bonds, and construction. In an area such as Potomoc Valley, continued growth could render the expanded facility inadequate even before completion.

The above example highlights one characteristic of rural growth which makes planning for that growth even more difficult. Urban growth is generally assumed to increase at a certain percent rate of growth. This growth rate can be found by reviewing historical growth data. These historical growth rates are frequently used as the basis of future population projections. In rural areas with historically low or stagnant growth, there is no way to anticipate the sudden splitting of farms into many homesites. In many rural settings, 50 new homes within a rural school district are an increase of astronomical proportions.

Much of the land development in Montana is occurring on lots which do not have improvements such as paved roads, sidewalks, and central sewer and water systems. A house located on a lot without such improvements has a lower assessed valuation than a similar house located on a lot with the improvements (Bjergo 1973, p. 7.). Residents of homes on the lots without these improvements expect and receive the same level of community services, such as schooling for their children, road maintenance, and law enforcement as those who reside in homes on lots which have the improvements. The affect of this difference is either lower levels of delivered community services or an inequitable tax burden. There is an even more dramatic difference in valuation between homes located on lots and mobile homes located in mobile home parks (Garrett 1977).

The lower density of development which often occurs in rural settings can result in inefficiency in the delivery of services (Kettler 1947). For example, if ten houses are located on one-acre parcels along a road rather than on ten-acre parcels, snow plows or school busses would have to travel only one-tenth the amount of road to service the same number of homes.

If a community does not have the ability to identify areas in which growth will occur, then problems resulting from growth cannot be anticipated, but must be solved as they arise. A county government which is able to encourage five new developments along an already improved county road will deliver services at a considerably lower cost than if it had to improve and maintain county roads to five new developments in separate locations.

A consumer protection problem can arise if lots, unsuitable for homesites, are sold. This is sometimes done knowingly through deliberately misleading advertisements (Porter 1977, p. 3). More often it occurs when lots are not reviewed as part of a subdivision review process. Lots located in a development with no central water or sewer system may not have adequate groundwater to supply a well or soils suitable for individual waste disposal systems. Some lots may have poor access to main roads (Granzow 1977).

Poorly designed or engineered developments can result in the physical deterioration of a homesite. There may not be any inexpensive means of stopping this deterioration. Owners of homes on these sites sell the problems caused by this deterioration to someone else and move to another location (Kaufman 1977). Deteriorating property lessens the value not only of that individual property, but the surrounding property as well. The area becomes a less attractive place to live, financially

as well as aesthetically. Property valuation for taxes decreases with decreasing property values resulting in an inequity between the services delivered and the taxes assessed.

In addition, poorly designed street layout and access can adversely affect the safety of motorists. An example is an intersection in Missoula, the junction of six streets, which was the site of the highest number of accidents in the city during one three-year period (Woodley 1973). The frustration of fighting traffic on a poorly planned street system can be substantial.

The above are only a few examples of social impacts which can result from uncontrolled development. Other more subtle social impacts may also be present.

NATURAL ENVIRONMENTAL IMPACTS

The division of rural land into homesites for families anxious to trade a crowded city environment for the spaciousness of country living, is characterized by the creation of large lots. Many of these lots are a considerable distance from centers of employment and commerce. Consequently, there is an increase in commuting distance which in turn increases energy consumption as well as pollution from car exhaust. Lower density developments also reduce the amount of available agricultural land (Wilcox 1977).

Houses built in rural areas often rely on individual wells for water supply and septic tanks for waste disposal. Septic tanks installed in unsuitable soils may pollute nearby streams or lakes or even the groundwater from which household water is drawn. In some areas, water withdrawal for residential use may be so great that local water tables

become lowered because of insufficient rates of aquifer recharge (Kettler 1977).

Building sites located on overly steep slopes also result in adverse environmental impacts. Home construction and road building activities entail the removal of stabilizing vegetative cover, exposing the underlying soil to erosion. Steeper slopes generally require greater cut-and-fill distances which expose even larger areas of soil to erosion. If accesses are not properly designed, roads may be built upon very steep slopes and have excessive grades. These roads are more susceptible to erosion and may become rutted, making them more difficult to negotiate. Much of the sediment from this increased erosion finds its way into rivers and lakes, decreasing water quality.

As was the case with social impacts, the above are only a few environmental impacts which can result from poorly planned or located developments.

THE MONTANA SUBDIVISION AND PLATTING ACT

Until 1973 local governments and citizens in Montana had few methods available for ameliorating these adverse social and environmental impacts. The Subdivision and Platting Act of 1973 was enacted by the Montana Legislature to give city and county governments the power to control the extent and character of development. This Act is included in Sections 11-3859 through 11-3876 of the Revised Codes of Montana (R.C.M.) of 1947.

The statement of purpose of the Act is found in Section 11-3860, Revised Codes of Montana and is as follows:

It is the purpose of this act to promote the public health, safety and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal; parks and recreational areas, ingress and egress, and other public requirments; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of subdivisions be contingent upon written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plan or certificate of survey.

This Act provides for a process of public review and governmental approval of subdivisions (11-3866 R.C.M. 1947). The Act also includes a section that requires the survey and recording of all land divisions occurring in the state (11-3862 R.C.M. 1947). Land divisions not recorded as part of an approved subdivison must be submitted as a certificate of survey (11-3872 R.C.M. 1947). Both subdivisions and certificates of survey are recorded with the county clerk and recorded (11-3867 R.C.M.1947). This statute and subsequent amendments are included in Appendix I.

Soon after enactment, however, it became apparent that the Montana Subdivision and Platting Act of 1973 was not as effective in alleviating the adverse impacts of land division as had been expected. Local planners and concerned citizens reported that major land divisions were being created without undergoing public review. It is, in part, the purpose of this paper to outline both the methods used to divide land without review and the magnitude of these divisions.

The data presented in this paper were gathered by the examination of plats and certificates of survey in nine Montana counties. Six of the counties--Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, and Ravalli--are included in this study because they are among the counties in Montana undergoing greatest developmental pressure. It is assumed the larger volumes of subdivisions and certificates of survey generated in

these counties make the characteristics of land division more readily apparent. The remaining three counties--Beaverhead, Broadwater, and Granite--were studied to determine if some of the same characteristics of land divisions occur in counties which are under less development pressure. The counties studied are shown in Figure 1.

The clerk and recorder's offices of each of these counties were visited and each certificate of survey and subdivision on record, beginning July 1, 1973, was examined individually. These examinations could not be completed simultaneously. The first Clerk and Recorder's Office visited was that of Cascade county in September 1976; and the period of time investigated was July 1, 1973, to September 1976, or three and one-quarter years. The last Clerk and Recorder's Office visited was that of Flathead County in December 1976; and the period of time investigated was from July 1, 1973, to December 1976, or three and one-half years.

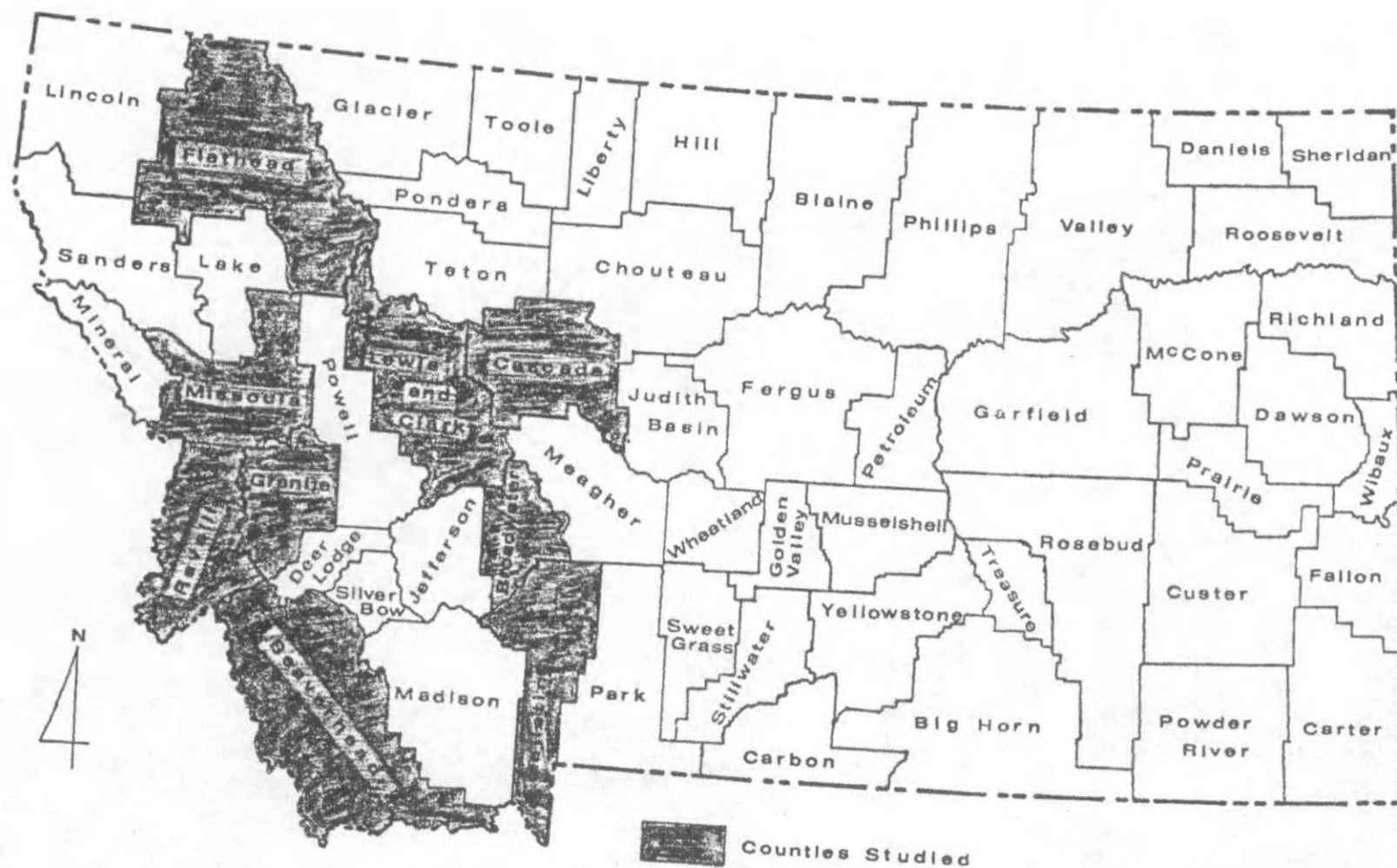


Figure 1
Counties Studied

CHAPTER II

LAND DIVISION STUDY RESULTS

The Subdivision and Platting Act first became effective July 1, 1973, and was revised effective June 30, 1974. In order to give local governments better control over developments in their areas of jurisdiction, the law required that divisions of land into lots that the Montana legislature considered to be dense enough to create social environmental and physical environmental problems be subject to review and approval by the local governing body. Divisions of land not considered to create problems did not have to undergo public review. However, an engineer's drawing of these land division surveys had to be filed with the county clerk and recorder's office as Certificates of Survey. The rules determining whether a lot should be created by subdivision or by certificate of survey will be discussed in greater detail in the section below concerning each time period.

The data resulting from the review of documents in the nine counties studied in this report show that a majority of the land division occurring during the period studied did not undergo public review. Of the nearly 130,000 acres divided from July 1973 to December 1976, about 120,000 acres, 93 percent of the total, were divided without public review. Of the total lots created during this period, 59 percent were divided by certificate of survey. A significant proportion of these unreviewed land divisions have the same characteristics as lots created by subdivision. These data raise serious questions about the effectiveness

of the act. Detailed data are arranged sequentially by time periods which correspond with changes in the statutes.

PERIOD FROM JULY 1, 1973, TO JUNE 30, 1974

The Subdivision and Platting Act originally stated that divisions of land into parcels of 10 acres or less, condominiums, and mobile home and recreational vehicle parks would be known as subdivisions and had to be reviewed and approved by the local governing body (11-3861 (12) R.C.M. 1947 (1973)). All other divisions of land, excepting those that can be described by government survey, were required to be surveyed.

Government surveys divide land into townships. Each township is further divided into 36 sections. Each section is in turn divided into half sections, quarter sections, quarter-quarter sections and so on. These are called aliquot parts. An example of a description of a piece of land that can be described by government survey is as follows: the north-east quarter of the northeast quarter of section one. The 40 acre parcel that is described in this manner does not need to be surveyed under the Montana Subdivision Law. It can be created by filing a deed which bears such a description.

An engineer's drawing of divisions that did need to be surveyed was to be submitted to the county clerk and recorder in a document to be known as a Certificate of Survey (11-3862 R.C.M. 1947). A Certificate of Survey was also required for surveys that did not create new parcels, such as retracements of existing surveys or changing the location of a boundary (11-3862 (6a) R.C.M. 1947). Certificates of survey that did not create new parcels have not been included in the data.

Table 1 shows the total acreages and parcels created by subdivision and certificate of survey during this period in the nine counties studied. The total acres divided by certificate of survey were twelve times greater than the total acres divided by subdivision, with approximately twice as many lots being created by certificate of survey. The average of the lots created certificate of survey is 13.62 acres, very close to the 10-acre size limit requirement for subdivisions. Many of the certificates of survey encountered during research divided hundreds of lots from the same piece of ground each measuring 10.01 acres, and in many cases 10.001 acres. Further evidence of the small acreages being divided is shown in Table 2. A majority of the acreage was divided into lots less than 20 acres in size, most of these between 10.01 and 20 acres in size.

The great majority of lots created during this time period was also under 20 acres in size as shown in Table 3. Since lots of less than 20 acres cannot sustain extensive agricultural operations, these lots were most likely created for homesites. The number of lots created by certificate of survey rendered the Subdivision and Platting Act partially ineffective. The creation of many large lots also resulted in the creation of very low density developments. Reports of these trends reached legislators, and in the legislative session of 1974 the statute was changed in an effort to make the law more effective.

PERIOD FROM JULY 1, 1974, TO DECEMBER 31, 1976

In 1974 the law was changed in several ways. It required lots split into parcels of less than 20 acres to be reviewed by local governments as subdivisions, but provided exemptions to this requirement.

TABLE 1

TOTAL PARCELS AND ACREAGE BY CERTIFICATE
OF SURVEY AND SUBDIVISION

July 1, 1973 - July 1, 1974

County	Certificate of Survey*			Subdivisions			Total Acres
	Acres	Parcels	Average Size	Acres	Lots	Average Size	
Lewis and Clark	10,364.29	722	13.58	426.74	239	1.78	10,791.03
Cascade	6,113.24	543	11.26	1	1	1	6,114.24
Ravalli	10,898.22	669	16.29	830.63	284	2.92	11,728.85
Broadwater	20.43	3	6.81	14.65	30	0.49	35.08
Flathead	10,680.13	882	12.11	1,475.25	539	2.74	12,115.38
Gallatin	8,513.73	498	17.10	827.29	544	1.52	9,341.02
Missoula	11,751.75	949	12.38	1,287.34	755	1.71	13,039.09
Beaverhead	2,108.31	174	12.12	32.94	44	0.75	2,141.25
Granite	541.18	39	13.88	0	0	0	541.18
TOTAL	60,991.28	4,479	13.62	4,895.84	2,436	2.01	65,887.12

*Excludes boundary relocation and retracement surveys

TABLE 2

TOTAL ACRES DIVIDED BY CERTIFICATE OF SURVEY

July 1, 1973 - July 1, 1974

County	10 Acres or Less	10.01-20 Acres	20+ Acres	TOTAL
Lewis and Clark	45.81	5,971.53	4,346.95	10,364.29
Cascade	1,086.28	3,828.05	1,198.91	6,113.24
Ravalli	507.73	4,845.77	5,544.72	10,898.22
Broadwater	.44	19.99	0	20.43
Flathead	1,313.81	5,585.43	3,779.89	10,680.13
Gallatin	32.53	5,878.76	2,602.44	8,513.72
Missoula	606.93	7,486.16	3,664.66	11,757.75
Beaverhead	147.53	1,960.78	0	2,108.31
Granite	16.22	524.96	0	541.18
TOTAL	3,757.28	36,101.43	21,138.57	60,997.27

TABLE 3

TOTAL PARCELS CREATED BY CERTIFICATE OF SURVEY

July 1, 1973 - July 1, 1974

County	10 Acres or Less	10.01-20 Acres	20+ Acres	Total Parcels Created
Lewis and Clark	17	504	201	722
Cascade	199	311	33	543
Ravalli	145	429	95	669
Broadwater	1	2	0	3
Flathead	415	453	14	882
Gallatin	9	479	10	498
Missoula	191	685	73	949
Beaverhead	43	131	0	174
Granite	4	35	0	39
TOTAL	1,024	3,029	426	4,479

These included exemptions for family conveyance, occasional sale, and agricultural purposes (11-3862 (6) R.C.M. 1947). Land divisions created under these exemptions do not have to go through the public review process, but do have to be filed as a certificate of survey along with all parcels of 20 acres or more (11-3862 R.C.M 1947).

The occasional sale exemption allows the division and sale of one parcel of land per year of under 20 acres without public review (11-3862 (6d) R.C.M. 1947). The family conveyance exemption allows a landowner to convey one parcel of land to each member of the immediate family (11-3862 (6b) R.C.M. 1947). Land divided solely for agricultural use is also exempt from review (11-3862 (6c) R.C.M. 1947).

A comparison of the total acres and total lots divided by subdivision and by certificate of survey during this period is shown in Table 4. Many of the characteristics evident in the data from the first time period are repeated during this time period. The amount of acreage divided by certificate of survey is approximately 15 times greater than the amount divided by subdivision. The number of lots created by subdivisions and certificates of survey was more nearly even during this time period. This difference is presumably a result of the 20-acre limitation which forces divisions of land into larger lots than took place under the 10-acre limitation. Again, the average lot size of 18.04 acres for parcels divided by certificate of survey is very close to the 20-acre limitation. Investigation of the records again showed many certificates of survey which divided large parcels of land into 20-acre parcels. Many of the lots were surveyed to measure 20.01, though during this time period divisions of 20 acres satisfied the letter of the law which required review of lots of less than 20 acres. The average subdivision

TABLE 4

TOTAL PARCELS AND ACREAGE BY CERTIFICATES
OF SURVEY AND SUBDIVISIONS

July 1, 1974 - December 1976

COUNTY	Certificate of Survey*			Subdivision			TOTAL
	Acres	Parcels	Average Size	Acres	Lots	Average Size	
Lewis and Clark	8,183.95	441	18.55	465.00	305	1.52	8,648.95
Cascade	2,087.51	185	11.28	112.50	206	0.55	2,200.01
Ravalli	11,644.07	492	23.67	103.44	57	1.81	11,747.51
Broadwater	242.17	21	11.53	14.65	30	0.49	256.82
Flathead	15,878.51	1,056	15.03	1,383.08	1,010	1.37	17,261.59
Gallatin	7,257.33	376	19.30	1,419.02	731	1.94	8,676.35
Missoula	12,293.57	609	20.19	303.47	346	0.88	12,597.04
Beaverhead	617.46	71	8.70	0	0	0	617.46
Granite	864.40	23	37.58	192.48	131	1.47	1,056.88
TOTAL	59,068.97	3,274	18.04	3,993.64	2,816	1.42	63,062.61

*Excludes Boundary Relocation and Retracement Surveys

lot decreased in size during this period--from 2.01 acres to 1.42 acres--while the average lot created by certificate of survey increased by about five acres--from 13.62 acres to 18.04 acres. This is again assumed to be a result of the 20-acre limitation. And again the assumption is that most of the lots of around 20 acres in size or less are to be used for homesites.

Table 5 shows the number of parcels created by certificate of survey under certain exemptions and lots of under 20 acres which were created without an exemption being written on the certificate of survey. The agricultural exemptions were not listed because it is assumed these are not to be used as homesites. The court order exemption was not listed because it was not a significant portion of the total. The mortgage release was used to divide a significant number of parcels, but it is felt by investigators, that in most cases, these parcels were not created for additional homesites, but merely to provide security for a home loan. Lending institutions require that the home be built on that part of the property providing security and therefore, this lot functions as a part of the larger parcel. The exclusion of these exemptions from this particular data is the reason for the discrepancy in the data totals between Table 4 and Tables 5 and 6. Over 50 percent of these lots are under 20 acres in size. Nearly 20 percent of the lots created were just over the 20-acre limitation--between 20 and 22 acres in size. Nearly 10,000 acres of land were divided into lots of less than 20 acres as shown in Table 6, and over 12,000 acres were divided into lots of between 20 and 22 acres in size. A good case could be made in support of the argument that acreages of up to 40 acres were not viable farm units and were also divided into lots for homesites.

Not included in this data are remainder parcels which may have been created by the use of exemptions. If an occasional sale of 5 acres

TABLE 5

PARCELS CREATED BY CERTIFICATE OF SURVEY UNDER SELECTED EXEMPTIONS

July 1, 1974 - December 31, 1976

County	Family Conveyance	Occasional Sale	No Exemption Listed	20-21.99 Acres	22-40 Acres	40.01+ Acres	TOTAL
Lewis and Clark	21	120	23	209	48	11	432
Cascade	12	19	105	18	21	6	181
Ravalli	7	64	178	84	62	53	448
Broadwater	0	12	5	1	0	2	20
Flathead	101	369	171	189	130	53	1,013
Gallatin	12	53	150	63	21	30	329
Missoula	35	175	99	35	108	56	508
Beaverhead	2	22	35	1	3	4	67
Granite	2	4	6	1	4	2	19
Total	192	838	772	601	397	217	3,017
Percent of Total	6.4%	27.8%	25.6%	19.9%	13.2%	7.2%	100%

TABLE 6

ACRES DIVIDED BY CERTIFICATE OF SURVEY UNDER SELECTED EXEMPTIONS

July 1, 1974 - December 31, 1976

County	Family Conveyance	Occasional Sale	No Exemption Listed	20-21.99 Acres	22-40 Acres	40.01+ Acres	Total
Lewis and Clark	126.49	661.12	103.87	4,439.30	1,256.71	1,318.98	7,906.47
Cascade	62.67	107.96	364.40	373.65	570.97	580.75	2,060.40
Ravalli	49.11	329.19	1,220.06	1,740.27	1,846.79	5,498.48	10,683.90
Broadwater	0	86.85	0	20.03	0	96.93	203.81
Flathead	579.53	1,993.53	846.19	3,805.01	3,683.79	4,147.98	15,056.03
Gallatin	20.59	287.83	1,245.68	1,310.12	608.67	3,268.47	6,741.36
Missoula	241.92	580.11	256.33	716.35	3,516.11	5,758.58	11,609.40
Beaverhead	4.81	91.89	112.12	21.34	79.82	273.09	583.07
Granite	7.60	14.33	27.02	20.55	83.63	696.78	849.96
TOTAL	1,092.72	4,152.81	4,175.67	12,446.62	11,646.54	21,640.04	55,154.40
Percent of Total	2.0%	7.5%	7.6%	22.6%	21.1%	39.2%	100%

is taken from a 10-acre lot, a 5-acre remainder parcel is created. (This will be discussed in more detail in Chapter III.) These remainder parcels do not have to be recorded on a certificate of survey, so they were not inventoried in this study.

The 1974 legislature raised the size of lots exempted from review to 20 acres or greater, the consensus being that these large acreages would be too costly to be readily marketable as homesites. The legislature, however, underestimated the marketability of 20-acre lots as is clearly indicated by the data. Over twenty percent of the lots created were just large enough to avoid review as a subdivision lots. One reason 20-acre parcels may be so easily marketed is that they may be easily divided into smaller lots through exemptions for the occasional sale and transfer to immediate family members. The ease with which larger lots may be split into smaller ones will be discussed in greater detail in Chapter III. Another reason may be that the cost of lots with improvements such as central water and sewer systems have become so great that larger lots without improvements are competitive in price.

Twenty-acre parcels may also be divided by deed alone. Parcels of land which can be described as aliquot parts, i.e., $1/32$ or larger aliquot portions of a section, if divided by deed, did not have to be surveyed or recorded by certificate of survey (see page 12). Parcels split by this method are not included in this study. This was not done because it would have entailed researching every deed filed in these courthouses since July 1, 1973. The supervisor of the Plat Room in the Flathead County Courthouse, where all transfers and divisions of land are recorded, reports that "quite a few" of the 20-acre parcels in Flathead County were created in this manner since the subdivision act was revised (Beck 1977).

Many large ranches and farms are being divided into 20-acre parcels. These are not for immediate sale, but are partitioned and recorded to avoid any future restrictions passed by the legislature (Granzow 1977).

Because of the 20-acre limitation, even lower densities of development were created during this time period than during the first, and presumably, agricultural lands were divided at a faster rate--aggravating land-use problems the Subdivision and Platting Act was designed to ease.

Many lots created by certificate of survey were under 20 acres in size and would have been reviewed publicly had it not been for the exemptions provided in the Subdivision and Platting Act (11-3862 R.C.M. 1947). The data from the second time period show conclusively that the statute revision (Sections 11-3859 - 11-3876 R.C.M. 1947) did not accomplish the goal of bringing major land division activity under the purview of local governing bodies.

The exemptions used to divide land into lots of less than 20 acres without undergoing public review, have seriously affected the utility of the act. These exemptions, and the attitudes of people who work with the Montana Subdivision laws will be discussed more thoroughly in the following chapter.

CHAPTER III

EXEMPTIONS AND THEIR ASSOCIATED PROBLEMS

The exemptions are intended to provide relief from the review procedure in those cases where little or no impact will occur, provided they are not used to evade the purpose of the act. The law provides exemptions to allow a gift or sale to a family member, adjust the location of a boundary line between two abutting properties, and make one occasional sale per year from a tract (11-3862 (6) R.C.M. 1947). Parcels created under these exemptions are required to be surveyed, and since 1975, the Department of Health and Environmental Sciences must approve the facilities for water supply, sewage and solid waste disposal (69-5003 (8) R.C.M.). No review, survey, or Department of Health approval is required for divisions created by a court order, as security for a mortgage, as a reservation of a life estate, for cemetery lots, to sever oil, gas, mineral, or water rights, or which could be created under the law of eminent domain (11-3862 (9) R.C.M. 1947).

When the exemptions are used as intended, the one or two parcels created may cause some problems, but the impacts should not be substantial. But where a number of parcels are created in the same area under the exemptions, the result is the creation of a sizable development with no assurance the potential impacts will be prevented or minimized.

The Planning Division of the State Department of Community Affairs (DCA) adopted administrative rules which place certain restrictions on the use of exemptions. These rules are shown in Appendix II.

Without these rules, the use of exemptions to avoid the subdivision review process could have been much greater than it was. However, the legal authority of DCA to adopt rules restricting the use of exemptions is unclear, and a district court ruling which overturned one of these rules was subsequently upheld by the Montana Supreme Court.

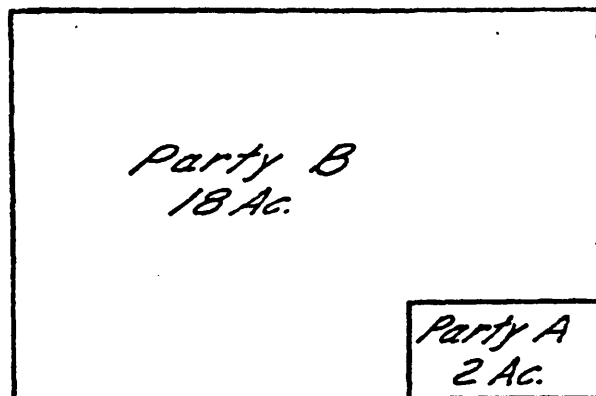
The Occasional Sale

The exemption for an occasional sale can be used in a variety of ways to create multiple lots. These methods are discussed and illustrated in the following pages. Administrative rules were adopted by the DCA to prohibit the use of the exemption as applied in the first two cases, but as mentioned above, these rules are subject to legal challenge.

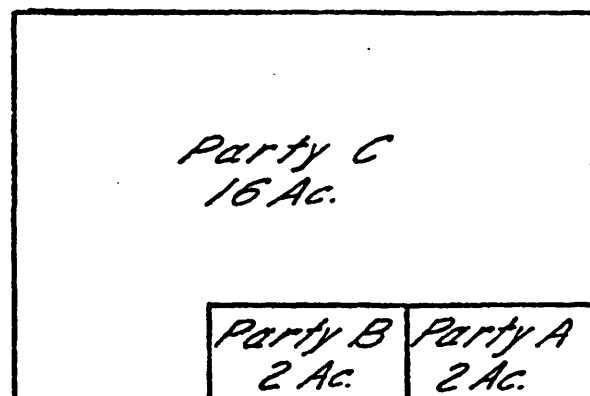
MULTIPLE PARCELS CREATED BY SUBSEQUENT BUYERS

Model 1 illustrates how additional parcels of less than 20 acres can be generated by the use of the occasional sale exemption. In Stage I Party A exercises the occasional sale by keeping two acres and selling to Party B on 18-acre parcel. Party B then retains two acres and sells 16 acres to Party C as shown in Stage II. This process could continue as shown in Stages III and IV until the original parcel was entirely split into two-acre parcels. This process could be completed in a very short period of time. After 12 months, each landowner would be eligible for another occasional sale.

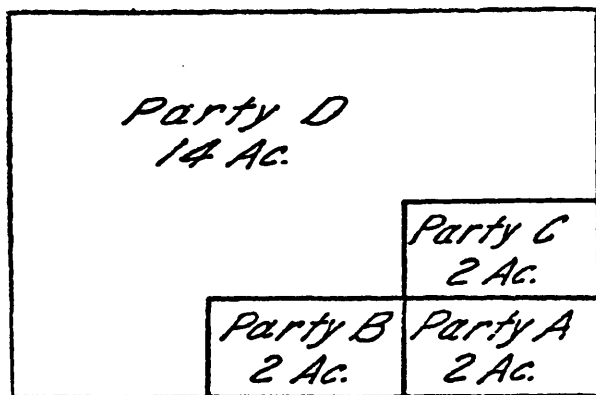
STAGE I



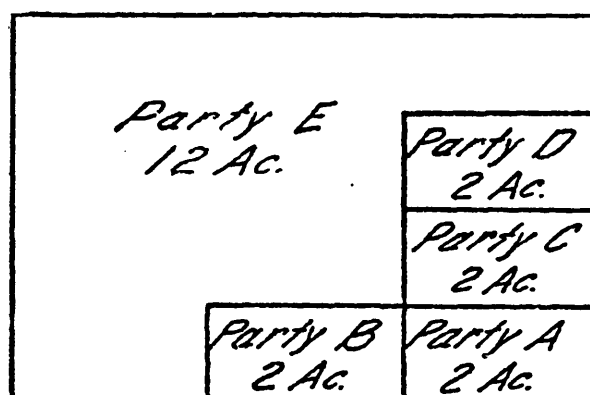
STAGE II



STAGE III



STAGE V



Model 1

Multiple Parcels Created By Subsequent Buyers

Dividing Large Tracts Into 20-Acre Parcels, Then Dividing
Each Parcel as An Occasional Sale

As illustrated in Stage I of Model 2, a 160-acre tract could be divided into eight 20-acre parcels without review (if the parcels were 1/32 aliquot parts of a section, this could be done by deed alone). An occasional sale may then be taken from each 20-acre parcel, creating sixteen 10-acre parcels without review, as shown in Stage II. Though the DCA rules prohibit this use of the occasional sale during a 12 month period, at the end of 12 months, each of the eight parties involved could take an occasional sale as shown in Stage II.

S T A G E I

1	5
2	6
3	7
4	8

20 Ac. Parcels

S T A G E I I

1	1A	5	5A
2	2A	6	6A
3	3A	7	7A
4	4A	8	8A

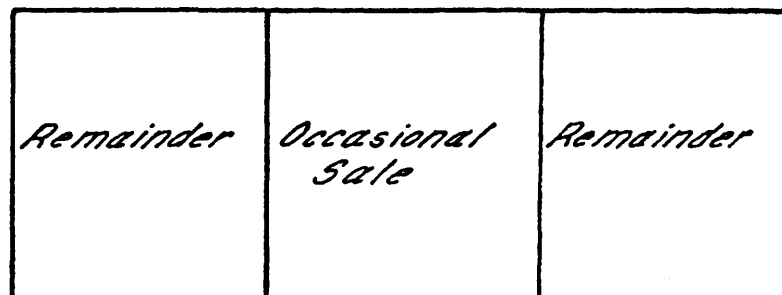
10 Ac. Parcels

Model 2

Dividing Large Tracts Into 20-Acre Parcels Then
Dividing Each Parcel By Occasional Sale

Taking An Occasional Sale From the Middle Of A Tract
Leaving Two or More Remainders

This type of division is shown in Model 3. The occasional sale may be taken from the middle of a rectangular tract, thereby leaving two remainders which may also be sold without review. With the right tract shape and some imagination a landowner could create four or more parcels with a strategically located occasional sale.



Model 3

Taking An Occasional Sale From The Middle Of
Tract Leaving Two Or More Remainders

COMBINATION OF EXEMPTIONS

A considerable number of parcels can be created without review by creating several parcels under another exemption and taking an occasional sale from each new parcel. For example, Model 4--Stage I shows that by using the exemption for transfer to members of the immediate family, a married man with two children may transfer a parcel to his wife and each of his children. Then, as Stage II illustrates, each person may take an occasional sale, thus creating eight parcels without review.

S T A G E I

<i>Owner</i>	<i>Child A</i>	<i>Child B</i>	<i>Spouse</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>

S T A G E I I

<i>Owner</i>		<i>Child A</i>		<i>Child B</i>		<i>Spouse</i>	
<i>1</i>	<i>1A</i>	<i>2</i>	<i>2A</i>	<i>3</i>	<i>3A</i>	<i>4</i>	<i>4A</i>

Model 4

Combinations of Exemptions

Gift Or Sale To Members Of The Immediate Family

The exemption for conveying land to members of the immediate family presents an opportunity for a landowner to create virtually an unlimited number of lots from a tract without review because the language in the law places no restrictions on its use. A Montana Attorney General's Opinion defined the immediate family as being "the spouse of the grantor and the children of the grantor by blood or adoption" (Montana Attorney General's Opinion No. 71, February 6, 1974). A husband and wife could convey land back and forth, creating a new lot with each conveyance. Most would agree that beyond some point, multiple conveyances to family members becomes an attempt to evade the subdivision act, but unless the law or local subdivision regulations specify a criterion for determining when evasion of the act occurs, local officials have little basis for preventing abuse of this exemption. DCA's administrative rules currently provide that more than one conveyance to each member of the immediate family constitutes an intent to evade the subdivision law and local governing bodies must include that criterion in their subdivision regulations.

The DCA rule restricting the use of the family conveyance exemption to one per family member has prevented its extensive use to avoid the subdivision review process. As already discussed, however, a large number of parcels still can be created when used in combination with the occasional sale. The exemption can also be used to create multiple parcels without review by conveying alternative parcels to family members, leaving several remainders. Model 5 shows how four parcels could be created without review by transfers to two members of the

immediate family.

	<i>Gift or Sale to Family Member</i>		<i>Gift or Sale to Family Member</i>
<i>Remainder</i>		<i>Remainder</i>	

Model 5

Transferring Alternate Parcels to Family
Members and Leaving Remainders

The potential for creating many lots by using the family conveyance exemption was made apparant by an inquiry made of the Department of Community Affairs (DCA) Planning Division subdivision specialist. The question asked was if a landowner could convey a parcel to each of his family members and then if they could in turn convey a parcel to each of their family members (Granzow 1976). For an example of this technique a man with a wife and three children will be used. If the man owns a parcel of land he can keep a parcel for himself and convey four parcels one to each of the other members of the family. Then each of these family members can keep one parcel and convey four parcels, one to each of the other members of the family. At the end of this process each family member will have five lots, the one retained plus the four conveyed by the other four family members. Thus 25 lots have been created from one. If each member of the family divided one of their lots by occasional sale then 30 lots would have been created without any review. If this use of

the family conveyance exemption were to be combined with the method illustrated in Model 5 then at least 60 parcels could be created without review. There is no provision either in the subdivision law or the DCA rules to prevent this kind of exchange. However, if the Montana Attorney General's Opinion of which members of the family qualify as immediate family were strictly enforced this method of dividing land would be curtailed.

The average lot sizes created by the occasional sale, transfer to family members, or without an exemption in the six counties under greatest development pressure, varied from 3.75 acres in Missoula County to 7.65 acres in Gallatin county (Table 7). This is compared with the average subdivision lot sizes in the same counties of from .55 acres in Cascade County to 1.94 in Gallatin County. In each of these six counties, more total acreage was split into lots of under 20 acres by these three methods than by subdivision plats.

Divisions Made For Mortgage, Lien, Or Trust Indenture

Lending institutions require that a person buying a tract of land on a contract for deed hold title to the parcel containing the home-site as security for a home construction loan. This exemption is not believed to have been used to avoid subdivision review. However, there is a potential for abuse. In Missoula county, a division of a parcel of land into ten lots, complete with cul-de-sac, was submitted on a certificate of survey under this exemption.

Division Of Land Created By Court Order

This exemption allows a court to divide land among parties in cases such as estate or divorce settlements. Under the language of the statute, this exemption may be used by a number of persons to avoid review

TABLE 7
ACREAGE OF SELECTED EXEMPTIONS 20 ACRES AND UNDER
AND SUBDIVISIONS IN SIX SELECTED COUNTIES

July 1, 1974 - December 1976

County	Method	Parcels	Acreage	Average/Parcel
Lewis and Clark	Exemptions			
	Occasional Sale	21	126.49	6.02
	Family Conveyance	120	661.12	5.50
	None Given	23	103.87	4.50
	Total	164	891.48	5.44
	Subdivision	305	465	1.52
Flathead	Exemptions			
	Occasional Sale	101	579.53	5.74
	Family Conveyance	369	1,993.53	5.40
	None Given	142	846.19	5.90
	Total	612	3,419.25	5.59
	Subdivision	1,010	1,383.08	1.37
Missoula	Exemptions			
	Occasional Sale	35	241.92	6.90
	Family Conveyance	175	580.11	3.30
	None Given	77	256.33	3.32
	Total	287	1,078.36	3.75
	Subdivision	346	303.47	.88
Ravalli	Exemptions			
	Occasional Sale	7	49.11	7.01
	Family Conveyance	64	329.19	5.14
	None Given	174	1,220.06	7.01
	Total	245	1,598.36	6.52
	Subdivision	0	103.44	1.81
Gallatin	Exemptions			
	Occasional Sale	12	20.59	1.71
	Family Conveyance	53	287.83	5.43
	None Given	138	1,245.68	9.03
	Total	203	1,554.10	7.65
	Subdivision	731	1,419.02	1.94
Cascade	Exemptions			
	Occasional Sale	12	62.27	5.22
	Family Conveyance	19	107.96	5.68
	None Given	105	364.40	3.47
	Total	136	535.03	3.93
	Subdivision	206	112.50	.55

by buying a tract in joint ownership and petitioning a court to divide the tract into parcels for individual ownership. This method was used in several counties to divide tracts of land into as many as eight parcels.

Under both the mortgage and court order exemptions, lots were created which under normal circumstances would have been subjected to undergo subdivision review. Lots created under these two exemptions do not even have to undergo Department of Health review to determine if they meet minimum sanitation requirements. They are also exempt from the surveying requirements of the subdivision law (11-3862 (9) R.C.M. 1947).

The Density Of Lots Created By Exemption

It is impossible to trace each tract of land created back to the original tract in order to determine the number of exempt splits taking place on one piece of ground. Only in the counties which record their land splits faithfully in tract books, section by section, can the spatial density distribution of lots created through exemptions be assessed. These tract books were used as a basis for the mapping of rural subdivisions as a part of the state-wide land-use mapping program.¹ The resulting maps published in the period of 1978 and 1979, will show that most lot splits have taken place in the same general areas, resulting in clusters of lots much as would be found in subdivisions.

One example of the use of many exemptions to divide a piece of ground is found in Missoula County. A 96-acre parcel was divided into

¹This cooperative program, initiated by the Planning Division of DCA, produced maps of every county in Montana which show basic land uses--residential, commercial, agricultural, etc. Many state and federal agencies provided assistance in the production of these maps.

four parcels by certificate of survey in June of 1975. By December of 1976 a series of certificates of survey had been filed using occasional sale, mortgage, and transfer to family member exemptions, which resulted in the creation of a total of 14 lots.² These ranged in size from one to ten acres in size. Three of these lots are not included in the data because they are remainders and did not have to be surveyed. The review of records revealed many obvious instances in the other counties surveyed where combinations of exemptions created contiguous lots of under 20 acres in size.

The above example is representative of circumstances that created misleading data in this study. For example, the 96-acre parcel was originally divided into four lots. Since each of the 14 succeeding divisions of this 96-acre parcel were individually tallied and added in the tables the data shows more land division than actually occurred because the same area was counted several times. The summation of all the acreages and certificates of survey filed totals 187.66 acres split into 17 lots. The actual count, of course, is 96 acres split into 14 lots. As a result, the total lots and acres reported in the data are greater than the actual number of acres divided and lots created. There is no way of measuring in how many times that such circumstances may have occurred resulting in the multiple counting of acres split and lots created.

²This was done by Certificates of Survey Numbers 633, 759, 848, 784, 836, 656, 830, and 722 filed in the Missoula County Clerk and Recorder's Office.

EXEMPTIONS AND ADMINISTRATIVE PROBLEMS

The Role Of The Clerk And Recorder

Exemptions place a tremendous burden on the county clerk and recorder offices. It is this office that must enforce the statutes and administrative rules under which certificates of survey are filed. Certificates of survey must be checked for corrections of the surveyor's measurements, statement of proper exemptions and sanitation approval by the Department of Health and Environmental Sciences. The Clerk and Recorder should make sure the exemption listed on a certificate of survey is proper by determining: (1) if a prior occasional sale has been taken from a tract within the last 12 months; (2) whether a transfer to a member of the immediate family has been previously made; or (3) if a parcel created for a family conveyance will actually be conveyed to a member of the immediate family.

This burden is substantial in counties where there are large numbers of land transfers made, e.g., Flathead county where 40 deeds per day are submitted for recording. Some county workers feel they should not be required to enforce these platting laws because they do not have adequate staff (Beck 1977).

Many courthouses do not have staff members adequately trained to research the validity of exemptions. Many also do not have standard procedures for the examination of certificates of survey prior to their being recorded. In these courthouses the certificates are accepted and recorded the minute they are submitted. Two surveyors, one from Missoula County and one from Ravalli County, have stated that the clerk and recorders will accept any exemptions the property owner uses without question. In some cases, the property owner will even leave the choice of exemptions up to the surveyor (Granzow 1976).

Many certificates of survey were filed without the exemptions being stated on the face of the document as required by DCA's administrative rules (Uniform Standards for Monumentation Certificates of Survey and Final Subdivision Plats, 22-2.4B (3)-54080 3 (b) 1976). In the nine counties surveyed, 246 of the certificates that were filed with the exemptions stated on the document, were not signed by the owner which is required by the same administrative rule. A 1974 State Attorney General's opinion holds that if filing and recording laws and regulations of the subdivision and platting act are not followed, the titles of parcels of land not properly filed may be effected (Montana Attorney General's Opinion No. 65, January 28, 1974).

The Role Of The Planning Department

In the counties surveyed, none of the planning departments have an official role in the review of certificates of survey, before they are recorded. In Missoula County, however, copies of certificates of survey are sent to the planning department where they are filed by township and range (Kettler 1977). In this way the planning department can keep track of the areas which are undergoing this type of land division. In some counties the planning departments are informally involved, and the Clerk and Recorder may ask for the planning department opinion if there is a question on a specific plat. However, these opinions have no legal weight.

The Role Of The County Attorney

It is the duty of the county attorney to prosecute violations of the subdivision law and to provide legal opinions regarding questions on individual certificates of survey which may be perplexing to the Clerk and

Recorder. Very few cases have been successfully prosecuted under the subdivision law.

In most of the counties studied, the county attorney's offices do not have staff members who specialize in land-use law. The Missoula County's Attorney's Office, however, does have a staff member who specializes in land-use cases. His opinion is that regulations restricting the use of exemptions to divide land are unenforceable (Gebhardt 1977). He knows of only two land-use cases that have ever been successfully prosecuted. One was a parcel that has been split and no certificate of survey filed, the other a zoning violation. The portion of the subdivision law designed to prevent the abuse of the exemptions, Section 11-3862 (6), has not proved to be effective. It states that the exemptions may be used "unless the method of disposition is adopted for the purpose of evading the (subdivision) act . . ." It would be difficult to prosecute under this section because it would involve proving the intent to use the exemptions was to evade the purpose of the act.

The subdivision law treats any offense as a misdemeanor punishable by not more than \$500 in fine and three months in jail (11-3876 R.C.M. 1947). Each separate parcel created in violation of the act is considered a separate offense. However, this has proven to be very little deterrent. First, because there have been very few prosecutions under the law. Secondly, because very high economic returns may be realized from real estate transactions, and many persons are more concerned with profit than with following the intent of the subdivision law.

One failing of the subdivision law is that even if the methods used to create the lot are found to be illegal, there is no way to vacate

the lot after it has been filed with the county clerk and recorder. Lots created illegally have the same status as lots created legally after they are recorded.

Effectiveness Of The Act

The weakness of the subdivision law caused by the exemptions has at least two effects. It has created inequities in the requirements placed on developers. It is also being used as an argument for pressuring planning commissions into approving subdivisions.

The inequities are caused because those developers who go through the subdivision process must incur the costs required to make a subdivision acceptable to a planning commission, costs which include expenditures of both time and capital. Exemptions have allowed the legal creation of large numbers of lots without many of the costs normally assessed a subdivider who goes through the formal subdivision process. The incentive is clearly to subdivide by exemption.

There have been two known instances of developers stating they would divide their land by exemption if their subdivision was not approved. A developer in Lake County told the county planner that if his subdivision plat was not approved by the planning commission and board of commissioners, he would divide the land by exemption (Erickson 1976). A public statement of this type was made in Missoula County. Members of the Missoula County Planning Commission were urged to approve a subdivision near Lolo by its developers who stated that if the subdivision was denied, "the area would be subdivided in an unplanned, free-split manner that would be unhealthy for the area" (Missoula County Commission Hearing, January 25, 1978).

Another problem caused by land-divisions created by certificates of survey is that they do not have to conform to county comprehensive land use plans. Land divisions which occur contrary to the use designated for an area by a comprehensive land-use plan render that plan ineffective.

The Subdivision Law Is Only Partially Effective

The fact that 70 percent of the 13,000 acres divided into parcels of 20 acres or less since July 1, 1974, was not reviewed implies that the act was not effective in assuring quality land development in Montana. The additional 23,000 acres surveyed into parcels of 20 to 40 acres is also evidence of that ineffectiveness.

Judging the quality of unreviewed land division in the state is virtually impossible because the design of those developments and their impact on community services and the physical environment cannot be evaluated on the basis of information shown on certificates of survey. However, the physical environmental impacts and social environmental impacts, as discussed in Chapter I of this study, are as certain to result from parcels created by certificate of survey as from lots created by subdivisions. The stated purpose of the subdivision and platting act is to "promote the public health, safety and general welfare" This purpose is not being met because of the large number of unreviewed land divisions shown in the data.

It is believed by state planning officials that there has been an improvement in the quality of land development which has been reviewed since passage of the law (Richard 1977). The single, most important factor contributing to better subdivision review is the in-depth examination of proposed subdivision by professional planners. Also, local

officials and planning board members have become more familiar with proper developmental design.

The survey of the records in nine courthouses revealed a wide divergence in compliance with the filing requirements. Most errors were inadvertant and occurred principally from a lack of understanding of the requirements for filing certificates of survey (Richard 1977). In nearly all the clerk and recorder's office, there was obvious improvement in the handling of certificates of survey. The two most common filing errors were: (1) filing certificates creating parcels by occasional sale or conveyance to a member of the immediate family without Department of Health approval, and (2) filing of plats using the occasional sale or family conveyance without the owner's signature as required by the DCA's administrative rules. As mentioned above a Montana Attorney General's Opinion held that deeds and contracts for deeds improperly filed may have a title problem. It is, therefore, imperative that plats be properly filed.

CHAPTER IV

RECOMMENDATIONS FOR LEGISLATIVE CHANGE

The data from the nine Montana counties studied provide evidence that many of the objectives of the Montana Subdivision and Platting Act are not being met in those parts of Montana where most of the land division activity is taking place. The principal reason is that large amounts of land have been divided into residential size lots through exemptions.

To address this basic problem, three legislative approaches to strengthen the statutes are possible: (1) modification of current statutes to either eliminate the use of exemptions or to further restrict their use, (2) give individual counties the power to restrict the use of exemptions, and (3) require that county planning departments review and approve all divisions of land in each county.

Modification Of Current Statutes

Increase the Size of Parcel Exempted from Review. The survey of land records show that a high percentage of land divisions in Montana resulted in parcels just over 20 acres in size. From the examples given in Chapter III it is apparent that even very large parcels can be quickly divided into smaller parcels by the use of a combination of exemptions. In Oregon all land divisions, regardless of size must be reviewed by the local government, either as subdivisions or partitions (92.010 (8) O.R.S.). It may be necessary to at least set a higher acreage limit in Montana, especially if the exemptions remain in effect. The elimination

or tightening of exemptions would allow a lower acreage limitation because these parcels could not be so easily divided into still smaller lots.

Eliminate Certain Exemptions

It is unfortunate that the occasional sale and family conveyance exemptions have been abused. Elimination of these two exemptions would make the subdivision law more effective, and the inventory of records clearly supports the case for their elimination. This would not only reduce the number of smaller parcels that could be created by certificate of survey, but might also make parcels larger than 20 acres less marketable because they could not be split further without going through subdivision review.

Further Restricting The Use Of Exemptions

Occasional sale and family conveyance exemptions. Regulations further restricting the use of these two particular exemptions might also increase the effectiveness of the subdivision act. This should be accomplished by statute rather than administrative rule so there will be no question as to the legality of the regulation. One possibility would be to allow only one occasional sale from any parcel of land. A limitation on the number of family conveyances should also be enacted so that families cannot divide land by transferring land back and forth between members.

Mortgage release and court order exemptions. The use of the exemption for mortgage liens and trust indentures for the security of construction financing should be restricted. Landowners creating a parcel under this exemption should be prohibited from conveying the parcel unless the subdivision review processes were followed.

Court order exemptions should be restricted to the settlement of estates and divorce cases. This would prevent persons from creating a number of parcels without review by purchasing a tract in joint ownership and petitioning the court to divide the tract into individual parcels by dissolution of the partnership.

Give individual counties more regulator power. Many of the changes recommended in the preceeding section were submitted to the Montana Legislature as amendments to the Subdivision and Platting Act in House Bill 543 during the 1977 session but were not adopted as law. One reason for the failure of these amendments was opposition by legislators from counties not undergoing rapid development, most of which are in eastern Montana. The feeling seemed to be that in counties where population and growth were stagnating or in some cases even declining, there is no reason to restrict the use of exemptions. This is because there is no intense pressure to subdivide and land divisions will be few and far between. For example, Powder River County had only nine certificates of survey filed during the three period that was inventoried, (Appendix III). Legislators from such areas have stated that to subject people in these counties to subdivision review procedures for the few small parcels they create would be unnecessarily burdensome.

A compromise would be to allow county governments to establish their own rules to modify the statutes pertaining to land divisions. By allowing this flexibility, those counties experiencing the greatest amount of land division activity by the exemptions could further regulate or restrict this activity. In counties where land divisions are not a problem, citizens could allow the exemptions as they stand. Washington State statutes contain language which allows the local planning commission

to "regulate and restrict the subdivision and development of land" (Washington Revised Codes 35.63.080). Oregon's legislature exempted divisions of land into three or fewer parcels from the subdivision review process (92.025 (8) O.R.S.). However, the statute also allows city or county governments to adopt regulations requiring approval by the city or county governments to adopt regulations requiring approval by the city or county of proposed partitions not otherwise subject to regulations as a subdivision in the Oregon Revised Statutes Chapter 92.046.

Including this type of language in Montana's subdivision statutes would give the laws a flexibility that might allow it to be passed by the legislature. Under this proviso those county governments which felt they had to regulate land division more closely would not be restrained by exemptions created in the state capitol.

Give planning departments review authority. The present law places the burden of administration and regulation of land division exempt from review on the county clerk and recorder. The more logical approach would be to place this burden with the county planning departments since this is in their field of expertise. A possible procedure would be to have a portion of the planning staff responsible for the review of all land divisions not a part of a platted subdivision. A division could be reviewed in light of its physical capability and possible social effects. The relation of any specific land division to other land divisions occurring in the same area could be evaluated in a review of this type. Summary approval could be made after review. If approval could not be made after review, a recommendation would be made to submit the land division to the planning commission for final dispensation.

There are two possible drawbacks to this approach. It could not be applied state wide because many counties in Montana do not have a planning department. It might be possible to make such a function within the planning department optional. Counties which felt such a method could be useful would be able to implement the necessary administrative framework. The other potential problem would be the immense work load that might have to be assumed by some county planning departments. This could render the approach ineffective. It might also greatly increase the volume of land division to be reviewed by the planning commissions of certain counties.

Recommended Alternative

The most workable and politically acceptable of these alternatives is to give individual counties the flexibility to adopt regulations which solve their particular problems. The character and magnitude of land division within the counties of Montana varies greatly. It would be most difficult to adopt a particular set of statutes regulating land division which could be equitably applied state wide.

CONCLUSION

The stated purpose of the Montana Subdivision and Platting Act is to allow local governments to evaluate proposed subdivisions and approve them only if they are determined to be in the public interest. If subdivisions are not brought before the public for review, clearly they cannot be evaluated in light of the public interest.

This study shows that a majority of the land division in the nine Montana counties inventoried is taking place without public review; and, therefore, the stated purpose of the act is being subverted. Many of the divisions of land escaping public review have the same characteristics as land divisions which are properly undergoing public review. If achieving the purposes stated in the Montana Subdivision and Platting Act is deemed to be in the best interests of the citizens of Montana, then measures must be taken to bring before local governing bodies all land division activity that has the potential to cause problems.

There are three ways this can be accomplished: (1) by eliminating or restricting existing exemptions; or (2) by allowing individual counties latitude in determining land division regulations; or (3) by giving local planning departments discretionary review over land division activities.

To leave the statute as it is will do little good. The efforts to develop areas which are well planned will be negated by those areas which are not well planned. Developers who try to work through the statutes will continue to be penalized; those who avoid the review process will continue to be rewarded. If the legislature cannot bring

itself to strengthen the statute, it should consider easing all requirements so at least every person dealing with the law receives equal treatment.

BIBLIOGRAPHY

BIBLIOGRAPHY

- Beck, Joan, Supervisor, Plat Room, Flathead County Clerk and Recorder's Office, Kalispell, Montana, Interview, June 1977.
- Bjergo, Allen C., and Maureen Fleming Ullrich, "Land Division: Subsequent Use and Costs in Western Montana," University of Montana, 1973, p. 7.
- Cole, David, Chief, State Planning Bureau, Division of Planning, Department of Community Affairs, Helena, Montana, Interview, March 1977.
- Erickson, David, Director of Planning, Lake County Planning Department, Polson, Montana, Interview, November 1976.
- Garrett, Barbara, State Planner, Division of Planning, Montana State Department of Community Affairs, Helena, Montana, Interview, February 1977.
- Gebhart, Richard, Assistant County Attorney, Missoula County Attorney's Office, Missoula, Montana, Interview, May 1977.
- Granzow, Steve, Subdivision Specialist, Division of Planning, Montana State Department of Community Affairs, Helena, Montana, Interview, January 1977.
- Granzow, Steve, "Memorandum: Regarding Notes from Conversations on the Subdivision Law," Division of Planning, Department of Community Affairs, Helena, Montana, December 30, 1976.
- Graveley, Charles A., Deputy County Attorney, "Letter: Regarding Senate Bill No. 227," Office of the County Attorney, Lewis and Clark County, Helena, Montana, October 10, 1975.
- Kaufman, Nicholas, Planner, City-County Planning Staff, Missoula, Montana, Interview, May 1977.
- Kettler, Jean, Subdivision Specialist, City-county Planning Staff, Missoula, Montana, Interview, May 4, 1977.
- Missoula County Commission Hearing, January 25, 1978.
- Montana Attorney General's Opinion No. 65, January 28, 1974.
- Montana Attorney General's Opinion No. 71, February 6, 1974.
- Montana, Revised Codes, (1947) 69-5001 - 09.
- Montana Uniform Standards for Monumentation, Certificates of Survey and Final Subdivision Plats, 22-2.4 B (30)-S4080 3(b) 1976.

Oregon, Revised Statutes, (1971) 92.010 (8).

Oregon, Revised Statutes, (1971) 92.025.

Oregon, Revised Statutes, (1971) 92.046.

Porter, Kenneth F., and Tina Torgrimson, "Ponderosa Pines Ranch: A Subdivision Case Study," State of Montana Environmental Quality Council, Helena, Montana, 1974, p. 3.

Richard, James E., Chief, Local Planning Services Bureau, Division of Planning, Department of Community Affairs, Helena, Montana, Interview, January 1977.

Washington, Revised Codes, 35.63.080.

Wilcox, David, Planner, City-County Planning Staff, Missoula, Montana, Interview, May 4, 1977.

Woodley, Donald R., "Missoula's Traffic Circulation and Development Plan for the '93 Strip'", Department of Geography, University of Montana, Spring 1973.

APPENDIX I

Unofficial Version of the Montana Subdivision and Platting Act

THE MONTANA UNIFORM STANDARDS FOR
MONUMENTATION,
CERTIFICATES OF SURVEY AND
FINAL SUBDIVISION PLATS

Adopted by the Department of Community Affairs, pursuant
to the Montana Subdivision and Platting Act (Section 11-3859
through 11-3876, R.C.M. 1947), effective April 5, 1976.

Division of Planning
Capitol Station
Helena, Montana 59601

April, 1976

Notice

With the exception of section titles, underlining indicates language added. Asterisks (*) indicate points where language contained in the original Uniform Standards was deleted.

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Sub-Chapter 30

Uniform Standards for Monumentation, Certificates
Of Survey, and Final Subdivision Plats22-2.4B(30)-S4080 UNIFORM STANDARDS FOR MONUMENTATION

(1) The following standards shall govern monumentation of land surveys:

(a) All permanent control monuments or monuments set to control or mark the boundaries of any division shall be of not less than one-half inch ($1/2$ ") diameter by twenty-four inches (24") in length with a cap of not less than one and one-quarter inch ($1-1/4$ ") diameter marked in a permanent manner with the name and/or registration number of the registered land surveyor in charge of the survey. A cap of the above dimensions may be set firmly in concrete.

(b) Prior to the filing of any subdivision plat or certificate of survey for record the land surveyor shall confirm the location of sufficient monuments to reasonably assure the perpetuation or reestablishment of any corner or boundary or retracement of the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments used in the survey, and the descriptions shall be sufficient to identify the monuments without reference to another record of survey.

(c) All monuments must be set prior to the filing of a plat or certificate of survey except those monuments which will be disturbed by the installation of improvements. Such monuments may be set subsequent to filing of the surveyor certifies that they will be set before a specified date.

(d) The plat or certificate shall clearly show the relationship of all adjacent monuments of record and the relationship of the monuments of record to monuments set after filing.

(e) Monuments not less than three-eighths inch ($3/8$ ") in diameter and eighteen inches (18") in length and marked with the name and/or registration number of the registered land surveyor in charge of the survey shall be set at the following locations:

(i) At each corner and angle point of all lots, blocks or parcels of land created.

(ii) At every point of intersection of the outer boundary of the subdivision with an existing or created right-of-way line.

(iii) At every point of curve, point of tangency, point of reversed curve, or point of compounded curve on each right-of-way line established.

(f) When the placement of a required monument at its proper location is impractical, the surveyor may set a reference monument near that point. Such a reference monument has the same status as other monuments of record if its location is properly shown. Where any point requiring monumentation has been previously monumented, the location of the existing monument shall be confirmed by the land surveyor if used, and if so confirmed shall likewise be considered a monument of record when properly shown and described on the certificate or plat filed.

(g) If the land surveyor uses any previously established monument, he must confirm the location of the monument. If properly confirmed and shown and described on the filed certificate or plat, such a monument shall be considered a monument of record. (History: Sec. 11-3862, R.C.M. 1947; NEW, MAC Not. No. 22-2-1; Order MAC No. 22-2-2; Adp. 12/16/73; Eff. 1/5/74; EMERG, AMD, Order MAC No. 22-2-4; Adp. 7/1/74; Eff. 7/1/74, AMD, MAC Not. No. 22-2-3; MAC Not. No. 22-2-4; Order MAC No. 22-2-5; Adp. 8/15/74; Eff. 10/5/74; PRIOR p. 22-12.21, 10-12/26/73.)

22-2.4B(30)-S4090 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY (1) A certificate of survey may not be filed by the county clerk and recorder unless it complies with the following requirements:

(a) Certificates of survey shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be * 18 inches by 24 inches * overall to include a 1½ inch margin on the binding side.

(b) One signed cloth-backed copy and one reproducible copy on a stable base polyester film or equivalent shall be submitted.

(c) Whenever more than one sheet must be used to accurately portray the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications shall be shown or referenced on one sheet.

(2) The certificate of survey shall show or contain, on its face or on separate sheets referenced on the face of the certificate of survey:

(a) A title block including the quarter section, section, township, range, principal meridian and county of the surveyed land. Space shall be provided on the certificate of survey for the clerk and recorder's filing information. A certificate of survey shall not bear the title "plat," "subdivision," or any title other than "Certificate of Survey."

(b) Name(s) of the owner(s) of the land surveyed and

the names of any adjoining platted subdivisions and numbers of any adjoining certificates of survey previously recorded and ties thereto.

(c) Date survey was completed and a brief description of why the certificate of survey was prepared, such as creation of a new parcel, retracement of section line, retracement of existing tract of land.

(d) North point

(e) * Scale bar (scale shall be sufficient to legibly represent the required data on the certificate of survey submitted for filing).

(f) All monuments found, set, reset, replaced or removed describing their kind, size, location and giving other data relating thereto.

(g) * The location of any corners of sections or divisions of sections pertinent to the survey.

(h) * Witness monuments, basis of bearing, bearings and length of lines.

(i) * The bearings, distances and curve data of all perimeter boundary lines shall be indicated. When the parcel surveyed is bounded by an irregular shoreline or a body of water, the bearings and distances of a meander traverse shall be given.

(j) * Data on all curves sufficient to enable the re-establishment of the curves on the ground. These data shall include:

(i) Radius of curve.

(ii) * Arc length.

(iii) * Notation of non-tangent curves.

(k) * Lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute.

(l) A metes and bounds legal description of the * perimeter boundary of the tract surveyed.

(m) * All parcels created by the survey, designated by number or letter, and the dimensions and area of each parcel. (Excepted parcels shall be marked "Not included in this survey").

(n) * The signature and seal of the registered land surveyor responsible for the survey. The affixing of his seal constitutes a certification by the surveyor that the certificate of survey has been prepared in conformance with the Montana Subdivision and Platting Act (section 11-3859 through 11-3976, R.C.M. 1947) and the regulations adopted pursuant thereto.

(o) Memorandum of oaths administered pursuant to section 11-3875, R.C.M. 1947.

(3) Procedures for divisions of land exempted from public review as subdivisions -- use of exemptions for the purpose of evading the act. Unless the method of disposition is adopted for the purpose of evading the Montana Subdivision and Platting Act, divisions of land meeting the criteria set out in section 11-3862(6), R.C.M. 1947, are not subdivisions subject to review under the Act. To assure that the method of disposition is not used to evade the act the following requirements must be met in the use of exemptions:

(a) The exemptions contained in section 11-3862(6), R.C.M. 1947, do not apply to the resubdivision or redesign of subdivisions platted and filed with the county clerk and recorder. Any such resubdivision or redesign must be reviewed and approved by the governing body and an approved amended plat thereof must be filed with the county clerk and recorder.

(b) Certificates of survey of a division of land which would otherwise be a subdivision but which is exempted from public review under section 11-3862(6), R.C.M. 1947, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land in question is exempted from review as a subdivision and citing the applicable exemption.

(c) Where the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed unless it bears a signed and acknowledged copy of the covenant.

(d) Exemption for "occasional sales." Only one occasional sale may be made within any 12-month period from any tract or from contiguous tracts of land created of public record on or after July 1, 1973, and held in single or undivided ownership. No portion of a tract or parcel of land may be the subject of an occasional sale more than once within any 12-month period. A certificate of survey for an occasional sale may not be filed unless it bears an acknowledged certificate of the property owner that the above criteria are met.

(e) Gifts or sales to members of the landowner's immediate family. Only one conveyance of a parcel of land to any one member of the grantor's immediate family is eligible for exemption from review and approval of the governing body under section 11-3862(6)(b), R.C.M. 1947. A certificate of survey for a gift or sale to a member of the grantor's immediate family may not be filed by the clerk and recorder unless it bears an acknowledged certificate of the property owner that this criterion is met.

(f) Certificates of survey showing the creation of new parcels of land pursuant to exemptions for gifts or sales to a member of the grantor's immediate family or for occasional sales may not be filed by the clerk and recorder unless they are accompanied by an instrument of conveyance of the parcel being created.

(g) Divisions of land which are exempted from treatment as subdivisions under section 11-3862(b) and (d) of the Subdivision and Platting Act are not thereby exempted from the review and approval of the State Department of Health and Environmental Sciences pursuant to sections 69-5001 through 69-5009, R.C.M. 1947.

(4) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Act. The divisions of land described in section 3862(4), (5), and (8), R.C.M. 1947, are not required to be surveyed nor must a certificate of survey or subdivision plat thereof be filed with the clerk and recorder. A certificate of survey of such a division may, however, be filed with the clerk if it meets the requirements for form and content for certificates contained in this section and bears a certificate of the surveyor performing the survey stating the applicable exemption from the Act. (History: Sec. 11-3862, R.C.M. 1947; NEW, MAC Not. No. 22-2-1; Order MAC No. 22-2-2; Adp. 12/16/73; Eff. 1/5/74; EMERG, AMD, Order MAC No. 22-2-4; Adp. 7/1/74; Eff. 7/1/74; AMD, MAC Not. No. 22-2-3; MAC Not. No. 22-2-4; Order MAC No. 22-2-5; Adp. 8/15/74; Eff. 10/5/74; PRIOR p. 22-12-23, 10-12/26/73; AMD, MAC Not. No. 22-2-7; MAC Not. No. 22-2-8; Order MAC No. 22-2-8; Adp. 3/15/76; Eff. 4/5/76; PRIOR p. 22-12.24, 9-9/25/74.)

22-2.4B(30)-S4100 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS (1) A final subdivision plat may not be approved by the governing body nor filed by the county clerk and recorder unless it complies with the following requirements:

(a) Final subdivision plats shall be legibly drawn with permanent ink or printed or reproduced by a process guaranteeing a permanent record and shall be * 24 inches by 36 inches overall to include a 1½ inch margin on the binding side.

(b) One signed cloth-backed copy and one reproducible copy on a stable base polyester film or equivalent shall be submitted.

(c) Whenever more than one sheet must be used to accurately portray the land subdivided, each sheet must show the number of that sheet and the total number of sheets included. All certifications shall be shown or referenced on one sheet.

(2) The final plat submitted for approval shall show or contain, on its face or on separate sheets referenced on the plat:

(a) A title block indicating the quarter-section(s), section, township, range, principal meridian, and county of the subdivision. The title of the plat shall contain the words "plat" and "subdivision."

(b) Name(s) of the owner(s) of the land surveyed and the names of any adjoining platted subdivisions and numbers of any adjoining certificates of survey previously recorded and ties thereto.

(c) North point.

(d) * Scale bar (scale shall be sufficient to legibly represent the required data on the plat submitted for filing).

(e) All monuments found, set, reset, replaced or removed describing their kind, size, location and giving other data relating thereto.

(f) * Witness monuments, basis of bearing, bearings and lengths of lines.

(g) The bearings, distances and curve data of all perimeter boundary lines shall be indicated. * When the subdivision is bounded by an irregular shoreline or body of water, the bearings and distances of a meander traverse shall be given.

(h) Data on all curves sufficient to enable the re-establishment of the curves on the ground. These data shall include:

(i) Radius of curve.

(ii) * Arc length.

(iii) * Notation of non-tangent curves.

(i) Lengths of all lines shall be shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute.

(j) The location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary.

(k) All lots and blocks in the subdivision, designated by number, the dimensions of each lot and block, the area of each lot, and the total acreage of all lots. (Excepted parcels shall be marked "Not included in this subdivision" or "Not included in this plat," as appropriate, and the boundary completely indicated by bearings and distances.)

(l) All streets, alleys, avenues, roads and highways; their widths, bearings; the width and purpose of all rights-of-way; and the names of all streets, roads and highways.

(m) The location, dimensions and areas of all parks, common areas, and all other grounds dedicated for public use.

(n) Acreage of the subdivision, gross and net.

(o) * A metes and bounds legal description of the perimeter boundary of the tract surveyed.

(p) * All monuments to be of record must be adequately described and clearly identified on the plat. Where additional monuments are to be set subsequent to the filing of the plat, the location of such additional monuments shall be shown by a distinct symbol noted on the plat. All monuments or other evidence found during retracements that would influence the positions of any corner or boundary indicated on the plat must be clearly shown.

(q) * The signature and seal of the registered land surveyor responsible for the survey. The affixing of his seal constitutes a certification by the surveyor that the final plat has been prepared in conformance with the Montana Subdivision and Platting Act (section 11-3859 through 11-3876, R.C.M. 1974) and the regulations adopted pursuant thereto.

(r) Memorandum of oaths administered pursuant to section 11-3875, R.C.M. 1947.

(3) The following documents shall accompany the approved final plat when filed with the county clerk and recorder:

(a) Certification of dedication of streets, parks or playgrounds, or other public improvements, or of cash donation in lieu of dedication, when applicable.

(b) Certification by a licensed title abstractor showing the names of the owners of record of land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(c) Copies of any covenants or deed restrictions relating to public improvements.

(d) Certification by the State Department of Health and Environmental Sciences that it has approved the plans and specifications for sanitary facilities.

(e) Copies of articles of incorporation and by-laws for any property owners' association.

(f) Certification by the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvements to be installed.

(g) Copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans.

(h) Certification by the governing body expressly accepting any dedicated land and improvements. Acceptance of dedication shall be ineffective without such certification.

(i) Certification of examining land surveyor where applicable.

(j) Copy of the state highway permit when a new street will intersect with a state highway. (History: Sec. 11-3862, R.C.M. 1947; NEW MAC Not. No. 22-2-1; Order MAC No. 22-2-2; Adp. 12/16/73; Eff. 1/5/74; EMERG, AMD, Order MAC No. 22-2-4; Adp. 7/1/74; Eff. 7/1/74; AMD MAC Not. No. 22-2-3; MAC Not. No. 22-2-4; Order MAC No. 22-2-5; Adp. 8/15/74; Eff. 10/5/74; PRIOR p. 22-12.24, 10-12/26/73; AMD, MAC Not. No. 22-2-7; MAC Not. No. 22-2-8; Order MAC No. 22-2-8; Adp. 3/15/76; Eff. 4/5/76; PRIOR p. 22-12.27, 9-9/25/74.)

APPENDIX II

**Rules Adopted by DCA/Planning Division for Administration
of the Subdivision and Platting Act.**

UNOFFICIAL VERSION OF
THE MONTANA SUBDIVISION AND PLATTING ACT
(SECTIONS 11-3859 THROUGH 11-3876, R.C.M. 1947)
AS AMENDED BY THE 1977 LEGISLATURE
IN SENATE BILLS 224, 225, AND 227

PREPARED BY
THE MONTANA DEPARTMENT OF COMMUNITY AFFAIRS
PLANNING DIVISION
CAPITOL STATION, HELENA, MONTANA 59601

JULY 1977

The preparation of this document was financed in part through a comprehensive planning assistance grant from the United States Department of Housing and Urban Development, under the provisions of Section 701 of the Housing Act of 1954 as amended.

The following is an unofficial version of the Montana Subdivision and Platting Act incorporating amendments adopted by the 1977 Legislature and effective July 1, 1977. Language added by these amendments is underscored, and language deleted by them is stricken.

UNOFFICIAL COPY OF:
CHAPTER 38, SECTIONS 11-3859 THROUGH 11-3876
MONTANA SUBDIVISION AND PLATTING ACT

- Section 11-3859. Citation of subdivision act
- 11-3860. Statement of purpose.
- 11-3861. Definitions.
- 11-3862. Surveys required - exceptions - standards
for monumentation.
- 11-3863. Enforcement by governmental subdivisions -
adoption of regulations - public hearing.
- 11-3864. Dedications of portions of subdivisions to the
public - cash donations in lieu of dedications -
waivers.
- 11-3865. Required abstract or title insurance -
certification by city or county attorney.
- 11-3866. Submission of subdivision plats to governing
body - notice - hearing - approval -
disapproval.
- 11-3867. Filing of subdivision plat with county recorder -
review of final subdivision plats and
certificates of survey by examining land
surveyor.
- 11-3868. Fees.
- 11-3869. Covenants run with the land.
- 11-3870. Vacation of plat - easements of utilities.
- 11-3871. Donations or grants to public considered a
grant to donee.
- 11-3872. Certificate of survey - when required -
contents - form.
- 11-3873. Index of plats to be kept by county clerk and
recorder.
- 11-3874. Correction of survey - at governing body's
expense.
- 11-3875. Administration of oaths by registered land
surveyor.
- 11-3876. Violation - misdemeanor.

11-3859. Citation of subdivision act. This act may be cited
as the "Montana Subdivision and Platting Act."

History: En. Sec. 1, Ch. 500, L. 1973.

11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that whenever necessary, the appropriate approval of any subdivision subdivisions be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey.

History: En. Sec. 2, Ch. 500 L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977.

11-3861. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act, the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States Government survey section or a United States Government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels

whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

(13) "Occasional sale" means one sale of a division of land within any twelve-month period.

History: En. Sec. 3, Ch. 500, L. 1973; amd. Sec. 1, Ch. 334, L. 1974; amd. Sec. 2, Ch. 498, L. 1975.

11-3862. Surveys required - exceptions - standards for monumentation. (1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with the Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

Within a platted subdivision filed with the county clerk and recorder any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder. For five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots are exempted from review as subdivisions. Exempted from local review outside of platted subdivisions are:

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Subdivisions totally within a master planning area adopted pursuant to 11-3801 through 11-3856 wherein zoning regulations pursuant to 11-2701 through 11-2709 or 16-4701 and a long-range development program of public works' projects pursuant to 11-3831 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(9) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) ~~which is created by a lien, mortgage, or trust indenture,~~
which is created to provide security for construction mortgages, liens, or trust indentures;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(10) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(11) The department of community affairs shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(12) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.

History: En. Sec. 4, Ch. 500, L. 1973; amd. Sec. 2, Ch. 334, L. 1974; amd. Sec. 19, Ch. 213, L. 1975; amd. Sec. 2, Ch. 552, L. 1977.

11-3863. Enforcement by governmental subdivisions - adoption of regulations - public hearing. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the coordination of roads within subdivided

land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of community affairs for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of community affairs, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of community affairs, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or when the subdivision will contain fewer than ten (10)

parcels and less than twenty (20) acres, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other

reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.

(8) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be not less stringent.

History: En. Sec. 5, Ch. 500, L. 1973; amd. Sec. 3, Ch. 334, L. 1974; amd. Sec. 20, Ch. 213, L. 1975.

11-3864. Dedications of portions of subdivisions to the public - cash donations in lieu of dedications - waivers. (1) A plat of a residential subdivision shall show that one-ninth (1/9) of the combined area of lots five (5) acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements

of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public.

History: En. Sec. 6, Ch. 500, L. 1973; amd. Sec. 4, Ch. 334, L. 1974.

11-3865. Required abstract or title insurance - certification by city or county attorney. (1) The subdivider shall submit with the final plat a certificate of a licensed title abstractor showing the names of the owners of record of the land to be subdivided and the names of lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

History: En. Sec. 7, Ch. 500, L. 1973; amd. Sec. 5, Ch. 334, L. 1974.

or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat. After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within one year.

(4) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest. To determine whether the proposed subdivision would be in the public interest the governing body shall issue written findings of fact which weigh the following criteria for public interest:

- (a) the basis of the need for the subdivision;
- (b) expressed public opinion;
- (c) effects on agriculture;
- (d) effects on local services;
- (e) effects on taxation;
- (f) effects on the natural environment;
- (g) effects on wildlife and wildlife habitat, and
- (h) effects on the public health and safety.

(5) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

(6) Subdivisions containing 5 or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(a) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof;

(b) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or, if it disapproves the subdivision, what local regulations would not be met by the subdivision;

11-3866. Submission of subdivision plat to governing body - notice - hearing - approval - disapproval. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects

(c) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record;

(d) Subsequent subdivisions from a tract of record shall be reviewed under section 11-3863(5) and regulations adopted pursuant to that section.

History: En. Sec. 8, Ch. 500, L. 1973, amd. Sec. 6, Ch. 334, L. 1974, amd. Sec. 3, Ch. 498, L., 1975; amd Sec. 1, Ch. 555, L. 1977.

11-3867. Filing of subdivision plat with county recorder - review of final subdivision plats and certificates of survey by examining land surveyor. (1) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) Except as provided in subsection (4), every final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. ~~or-offered-for-sale-or-transfer.~~ If illegal transfers ~~or-offers~~ of any manner are made, the county attorney shall commence action to enjoin further sales or transfers, ~~or-offers of-sale-or-transfer~~ and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring ~~or-offering-to-transfer~~ the property.

(4) After the preliminary plat of a subdivision has been approved or conditionally approved the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(a) That under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the State of Montana.

(b) That under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.

(c) That the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract, and

(d) That the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner."

History: En. Sec. 9, Ch. 500, L. 1973; amd. Sec. 7, Ch. 334, L. 1974; amd. Sec. 1, Ch. 553, L. 1977.

11-3868. Fees. The governing body may establish reasonable fees to be paid by the subdivider to defray the expense of reviewing subdivision plats.

History: En. Sec. 10, Ch. 500, L. 1973.

11-3869. Covenants run with the land. All covenants shall be considered to run with the land, whether marked or noted on the subdivision plat or contained in a separate instrument recorded with the plat.

History: En. Sec. 11, Ch. 500, L. 1973.

11-3870. Vacation of plat - easements of utilities. (1) Any plat prepared and recorded as herein provided may be vacated either in whole or in part as provided by sections 11-2801 and 11-2803, and upon such vacation the title to the streets and alleys of such vacated portions to the center thereof shall revert to the owners

of the properties within the platted area adjacent to such vacated portions; provided, however, that when any pole line, pipeline, or any other public or private facility that is located in a vacated street or alley at the time of the reversion of the title thereto, the owner of said public or private utility facility shall have an easement over the vacated land to continue the operation and maintenance of the public utility facility.

(2) All plats, certificates of survey, and other title records recorded after June 30, 1973, and prior to the effective date of this act in accordance with the law in force at the time of recording, and all plats, certificates of survey, and other title records recorded prior to July 1, 1973, and which have not been subsequently vacated are hereby validated, notwithstanding irregularities, and have the same legal status as plats recorded under the provisions of this act.

(3) The recording of any plat made in compliance with the provisions of this act shall serve to establish the identity of all lands shown on and being a part of such plat. Where lands are conveyed by reference to a plat, the plat itself or any copy of the plat properly certified by the county clerk and recorder as being a true copy thereof, shall be regarded as incorporated into the instrument of conveyance and shall be received in evidence in all courts of this state.

(4) This act shall not be applicable to deeds, contracts, leases, or other conveyances executed prior to the effective date of this act. Any instrument affecting real property which was executed prior to July 1, 1973, shall be deemed to be valid notwithstanding any failure to comply with platting or subdividing requirements in effect prior to July 1, 1973, and shall have the same force and effect as instruments complying with such platting and subdividing requirements.

History: En. Sec. 12, Ch. 500, L. 1973; amd. Sec. 8, Ch. 334, L. 1974.

11-3871. Donations or grants to public considered a grant to donee. Every donation or grant to the public, or to any person, society, or corporation, marked or noted on a plat is to be considered a grant to the donee.

History: En. Sec. 13, Ch. 500, L. 1973.

11-3872. Certificate of survey - when required, contents - form. (1) Within one hundred eighty (180) days of the completion of a survey the registered land surveyor responsible for the survey,

whether he is privately or publicly employed, shall prepare and file for record a certificate of survey in the county in which the survey was made if the survey:

(a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;

(b) reveals a material discrepancy in such map;

(c) discloses evidence to suggest alternate locations of lines or points;

(d) establishes one or more lines not shown on a recorded map the positions of which are not ascertainable from an inspection of such map without trigonometric calculations.

(2) A certificate of survey will not be required for any survey which is made by the United States bureau of land management or which is preliminary or which will become part of a subdivision plat being prepared for recording under the provisions of this act.

(3) Certificates of survey shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and shall conform to monumentation and surveying requirements promulgated under this act.

History: En. Sec. 14, Ch. 500, L. 1973.

11-3873. Index of plats to be kept by county clerk and recorder. The county clerk and recorder shall maintain an index of all recorded subdivision plats and certificates of survey. This index shall list plats and certificates of survey by the quarter section, section, township, and range in which the platted or surveyed land lies and shall list the recording or filing numbers of all plats depicting lands lying within each quarter section. Each quarter section list shall be definitive to the exclusion of all other quarter sections. The index shall also list the names of all subdivision plats in alphabetical order and the place where filed.

History: En. Sec. 15, Ch. 500, L. 1973.

11-3874. Correction of survey - at governing body's expense. When a recorded plat does not definitely show the location or size of lots or blocks, or the location or width of any street or alley, the governing body may at its own expense cause a new and correct

survey and plat to be made and recorded in the office of the county clerk. The corrected plat must, to the extent possible, follow the plan of the original survey and plat. The surveyor making the re-survey shall endorse the corrected plat referring to the original plat and noting the defect existing therein and the corrections made.

History: En. Sec. 16, Ch. 500, L. 1973.

11-3875. Administration of oaths by registered land surveyor.
Every registered land surveyor may administer and certify oaths:

(1) when it becomes necessary to take testimony for the identification of old corners or re-establishment of lost or obliterated corners;

(2) when a corner or monument is found in a deteriorating condition and it is desirable that evidence concerning it be perpetuated;

(3) when the importance of the survey makes it desirable to administer an oath to his assistants for the faithful performance of their duty.

A record of oaths shall be preserved as part of the field notes of the survey, and noted on the certificate of survey filed under this section.

History: En. Sec. 17, Ch. 500, L. 1973.

11-3876. Violation - misdemeanor. Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer, ~~or offer for sale, lease, or transfer~~ of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

History: En. Sec. 18, Ch. 500, L. 1973; amd. Sec. 2, Ch. 553, L. 1977.

APPENDIX III

Total Land Division Instruments Filed in Montana
From July 1, 1973 to December 1976

TOTAL LAND DIVISION INSTRUMENTS FILED

July 1, 1973 - Fall 1976

<u>County</u>	<u>Number of Certificates of Survey</u>	<u>Number of Subdivisions</u>	<u>County</u>	<u>Number of Certificates of Survey</u>	<u>Number of Subdivisions</u>
BEAVERHEAD*	79	1	Madison	138	16
BigHorn	107	6	Meagher	5	0
Blaine	64	0	Mineral	45	37
BROADWATER*	32	3	MISSOULA*	1,036	45
CASCADE*	550	17	Musselshell	46	0
Carbon	78	18	Park	174	10
Carter	13	0	Petroleum	0	0
Chouteau	12	0	Phillips	47	2
Custer	65	54	Pondera	42	2
Daniels	14	0	Powder River	9	23
Dawson	194	3	Powell	75	3
Deer Lodge	65	11	Prairie	8	0
Fallon	9	2	RAVALLI*	698	14
Fergus	76	13	Richland	55	4
FLATHEAD*	1,650	114	Roosevelt**		
GALLATIN*	342	52	Rosebud	66	2
Garfield	11	0	Sanders	166	2
Glacier	31	4	Sheridan	14	0
Golden Valley	1	0	Silver Bow	74	3
GRANITE *	29	3	Stillwater	94	29
Hill**			Sweet Grass	103	3
Jefferson	70	24	Teton	35	2
Judith Basin	14	4	Toole	14	3
Lake	443	23	Treasure	7	0
LEWIS & CLARK*	398	34	Valley	25	3
Liberty	6	1	Wheatland	5	1
Lincoln**			Wibaux	9	0
McCone	47	2	Yellowstone	404	60

*Capitalized counties are those inventoried by staff.

**Information not available for some counties.